

IN THE HIGH COURT OF BOMBAY AT GOA.

LETTERS PATENT APPEAL NO. 4 OF 2002.

Dr. Armando J.B. Mascarenhas,
Duarte Pacheco Rd.,
Panaji.

... Appellant.

Versus

1. Smt. Sunitabai Somnath
Dhungat, w/o late
Somnath F.P. Dhungat.
2. Shri Sandip Somnath
Dhungat, son.
3. Smt. Sangita Sandip
Dhungat, w/o Sandip
Somnath Dhungat,
All r/o Verem.
4. Administrative Tribunal
through its President,
Panaji.
5. Addl. Rent Controller,
Goa North Division,
Panaji.

... Respondents.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. J.
Godinho, Advocate for the Appellant.

Mr. J.P. Mulgaonkar, Advocate for the Respondents 2 and
3.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 5th August 2003.

ORAL JUDGMENT (PER HARDAS, J.)

The unsuccessful petitioner in Writ Petition No. 389 of 1997, which was dismissed by the learned Single Judge by his Judgment, dated 19th October 2001, has filed this Letters Patent Appeal challenging the aforesaid Judgment.

2. The facts which are necessary for the decision of this Letters Patent Appeal can be briefly stated

hereunder:-

The appellant is the landlord and the respondents are the tenants in the premises of the building known as 'Mascarenhas Building'. The respondents were earlier tenants in the same building where eviction proceedings were initiated on the ground that the petitioner/landlord wanted to reconstruct the building. Ultimately a decree of the Civil Court came to be passed, which was executed and the respondents/tenants were evicted from the said premises. On reconstruction of the said building, the respondents herein were offered shop premises, namely, shop nos. 4 and 5, on rents which were mutually agreeable to both the parties.

3. The controversy involved in the present matter is extremely limited. The respondents herein on the lease deed being executed in respect of the shop premises, used the said premises as a godown for storing paints, hardware, steel, etc.. The appellant herein filed an application before the learned Rent Controller, North Goa, Panaji, being Rent Application No. 4 of 1985, seeking a decree of eviction of the respondents from the suit premises on the ground that the respondents had changed the user of the premises. In paragraph 2 of the said application it was stated as

under:-

"2. The terms and conditions of the said lease were amongst others, that the lessee was to use the premises only for the purposes of business regarding paints, hardware, steel, construction material and cement and for no other purpose. The respondent has ceased to use the said premises for the aforesaid purposes. The respondent has in fact changed and is using the suit premises as a godown."

4. The respondents herein by their written statement denied that there was any change of user. The learned Rent Controller by his aforesaid Order held that as the respondents had used the premises as a godown, it amounted to change of user and, consequently, allowed the application of the appellant herein. The respondents, being aggrieved by the Order of the learned Rent Controller, filed proceedings before the Administrative Tribunal. The Tribunal came to the conclusion that there was no change of user and, consequently, dismissed the application filed by the appellant herein seeking eviction of the respondents. The appellant herein then filed a Writ Petition in this Court, namely, Writ Petition No. 389 of 1997, and the learned Single Judge of this Court by his Judgment, which is impugned in the Letters Patent Appeal, dismissed the Writ Petition.

5. The learned Single Judge had come to the

conclusion that there was no change of user in the respondents using the premises as a godown. For this purpose, the learned Single Judge has relied on Clause 9 of the lease deed, which reads as under:-

"ix. To use the lease premises only for the purpose of business regarding paints, hardware, steel, construction materials and cement and no other purpose....".

6. The learned single Judge came to the conclusion that the premises were not let out to the respondents herein for the sole purpose of running a shop, that is, selling the articles across a counter, but the premises were let out for the purpose of business regarding paints, hardware, steel, construction materials, etc.. Thus, in that background, the learned Single Judge came to the conclusion that there was no change of user in the premises.

7. Mr. Pereira, the learned senior counsel appearing on behalf of the appellant, has urged before us that admittedly, the premises which were let out to the respondents herein have been described in the lease deed as 'shop' and, therefore, the words 'for the purpose of business' have to be read as meaning that the premises ought to be used for the purpose of shop only.

8. Clause ix of the lease deed makes it very

clear that the premises are to be used for the purpose of business regarding paints, hardware, steel, construction materials and cement and for no other purpose. Merely because the premises have been described in the lease deed as 'shop' a restrictive meaning on the words 'for the purpose of business' cannot be put to mean that the premises are to be used for the purpose of shop only. Anyway, according to us, the learned Single Judge, on the basis of clause ix of the lease deed, has come to the conclusion that there was no change of user as admittedly, the respondents/tenants were using the premises as godown for storing of paints, hardware, steel, etc.. Thus, the terms were not used for any other purpose other than for business dealing in paints, hardware, etc..

9. The learned counsel for the appellant has placed reliance on the Judgment of the Apex Court in **M. Arul Jothi and another v. Lajja Bal (deceased) and another**, (2000) 3 S.C.C. 723. In the reported Judgment the agreement contained a condition that the shop shall be used by the tenant only for carrying on his business dealing in radios, cycles, fans, clocks and steel furniture and for non-residential purpose and the tenant shall not carry on any other business than the said business. Admittedly, in the case before the Supreme Court the tenant was carrying on the business of selling

condiments and, therefore, there was a clear breach of the terms of the agreement. In this background of facts, therefore, the Apex Court held that it amounted to a change of user. The facts of the reported Judgment are obviously, inapplicable to the facts of the present case and cannot be used for the controversy in the present matter.

10. We have given our anxious consideration to the submissions advanced by the learned counsel for the appellant. The interpretation of clause ix of the lease deed as interpreted by the learned Single Judge appears to us to be a possible interpretation and in this Letters Patent Appeal no occasion arises for us to upset the findings recorded by the learned Single Judge, which confirms the findings of fact recorded by the Tribunal. According to us, there is no merit in the Letters Patent Appeal and the same is dismissed with no order as to costs. We make it clear that we have not dealt with the issue regarding the maintainability of the present Letters Patent Appeal as on perusal of the Judgment of the learned Single Judge on facts we are satisfied that the Judgment requires no interference.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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